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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/602,416	06/23/2003	Scott Seamans	40130-050010	9598

20350 7590 10/21/2005

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EXAMINER

MOHANDESI, JILA M

ART UNIT	PAPER NUMBER
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3728

DATE MAILED: 10/21/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/602,416	Applicant(s) SEAMANS, SCOTT	
	Examiner Jila M. Mohandesi	Art Unit 3728	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE _____ MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☐ Claim(s) _____ is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) _____ is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. This application contains claims 33-39 drawn to an invention nonelected with traverse in Paper filed on March 07, 2005. A complete reply to the final rejection must include cancellation of nonelected claims or other appropriate action (37 CFR 1.144) See MPEP § 821.01.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1, 9, 12-16, 18-27 and 40-42 are rejected under 35 U.S.C. 103(a) as being unpatentable over Aguerre (6,237,249) in view of Seidel et al. (4,476,600), the admitted prior art on page 11 of the instant specification and Albiniano (2,897,566). Aguerre '249 discloses a breathable footwear (ventilation holes 130) with a sole comprising an outer portion of a rear sole perimeter, a bottom surface and a support base, and wherein the support base includes a raised pattern where the foot contacts the support base to provide support to the heel of the wearer and helps maintain the footwear in position. Aguerre '249 also discloses the breathable footwear to include a strap pivotable attached by a plastic rivet at opposite ends thereof to the base section for securing the footwear on the foot of the wearer. Aguerre '249 does not disclose the upper and sole section being formed from a piece of lofted foam material and for the

strap to made of foam and it is also silent as whether the pivotable strap contacts the outer portion of the rear sole perimeter. Seidel '600 discloses a breathable footwear piece with ventilation holes, the breathable footwear piece comprising: a base section, wherein the base section includes an upper and a sole formed as a single part molded from a first continuous piece of expandable foam material. See Figures 1 and 6 embodiments. Albiniano '566 discloses that it is desirable to have the strap also swivel/pivot towards the back of the shoe and maintained on the rear sole perimeter to allow the shoe to be worn without the strap in different arrangement to give the wearer different design options.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to make the upper and sole of Aguerre '249 from a piece of expanded foam material and the strap from expanded foam material as taught by Seidel '600 for easier and cheaper manufacturing of the footwear.

With respect to the expandable foam material of Seidel '600 being lofted foam material , the admitted prior art in the instant specification discloses that it is desirable to manufacture footwear from an expandable EVA known commercially as LEVIREX which is considered to be a lofted foam material which can exhibit a final growth value of between 1.47 and 1.58. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to make the modified footwear of Seidel '600 from lofted foam material as taught by the admitted prior art in the instant specification to provide a relatively soft footwear piece that has very good anti-slip capabilities, and at the same time, size reproducibility and durability.

Also it would have been obvious to one of ordinary skill in the art at the time the invention was made to also have the strap of Aguerre '249 swivel to the back of the shoe and contact the outer portion of the rear sole perimeter and be maintained fixed relative to the base section as taught by Abiniano '566 to allow the shoe to be worn without the strap in different arrangement to give the wearer different design options.

With respect to claim 24, see Figures 1 and 2 of Aguerre '249, which includes both toe, and heel raised sections for better supporting the foot.

With respect to claims 20-22, Seidel '600 discloses an upper that includes a substantially vertical region, where the vertical region includes a toe region and opposing side regions, and wherein the toe region is solid portion, and wherein at least some of the plurality of ventilators are formed in the side regions. Aguerre '249 discloses a toe region that clearly follows the contour of a human foot. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to make the toe region of the upper of Aguerre '249 extend at a location corresponding to the larger toes of the human foot as taught by Seidel '600 to provide better protections to the toes of the wearer.

The product-by-process limitation in claim 26 results in no structure that is different from Seidel '600 as modified above.

4. Claims 24 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over the above references as applied to claim 1 above, and further in view of Lamstein (Des. 416,667). Aguerre '249 as modified above discloses all the limitations of the claims except for the support base including raised pattern extending throughout the

surface and for the bottom surface of the sole having front and rear tread patterns longitudinally connected by a flat section. Lamstein discloses a molded footwear with the support base including raised pattern extending throughout the surface and with the bottom surface of the sole having front and rear tread patterns longitudinally connected by a flat section. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the support base with raised pattern extending throughout the surface of the footwear of Aguerre '249 as taught by Lamstein for better massaging the foot and for the bottom surface of the sole having front and rear tread patterns longitudinally connected by a flat section for easier manufacturing as taught by Lamstein.

Response to Arguments

5. Applicant's arguments with respect to claims 1, 9, 12-16, 18-27 and 40-42 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

6. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the

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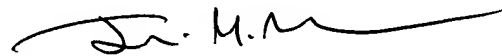
shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jila M. Mohandesi whose telephone number is (571) 272-4558. The examiner can normally be reached on Monday-Friday 7:30-4:00 (EST).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on (571) 272-4562. The fax phone number for the organization where this application or proceeding is assigned is 571-273-4558.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

**JILA M. MOHANDESI
PRIMARY EXAMINER**


Jila M Mohandesi
Primary Examiner
Art Unit 3728

JMM
October 20, 2005